

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 BRYAN DRYDEN,

4 Plaintiff

Case No. 2:20-cv-01730-GMN-NJK

SCREENING ORDER

5 v.

6 M. HUBBARD PICKETT, et al.,

7 Defendants
8

9 Plaintiff, who is in the custody of the Nevada Department of Corrections (“NDOC”),
10 has submitted a civil rights complaint under 42 U.S.C. § 1983 and has filed an application
11 to proceed *in forma pauperis*. (ECF No. 1, 1-1). The matter of the filing fee will be
12 temporarily deferred. The Court now screens Plaintiff’s civil rights complaint under 28
13 U.S.C. § 1915A.

14 **I. SCREENING STANDARD**

15 Federal courts must conduct a preliminary screening in any case in which a
16 prisoner seeks redress from a governmental entity or officer or employee of a
17 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any
18 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
19 upon which relief may be granted, or seek monetary relief from a defendant who is
20 immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however,
21 must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
22 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
23 elements: (1) the violation of a right secured by the Constitution or laws of the United
24 States, and (2) that the alleged violation was committed by a person acting under color
25 of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

26 In addition to the screening requirements under § 1915A, pursuant to the Prison
27 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner’s claim if “the
28 allegation of poverty is untrue” or if the action “is frivolous or malicious, fails to state a

1 claim on which relief may be granted, or seeks monetary relief against a defendant who
2 is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure
3 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil
4 Procedure 12(b)(6), and the court applies the same standard under § 1915 when
5 reviewing the adequacy of a complaint or an amended complaint. When a court
6 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
7 complaint with directions as to curing its deficiencies, unless it is clear from the face of
8 the complaint that the deficiencies could not be cured by amendment. See *Cato v. United*
9 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
11 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure
12 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
13 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
14 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
15 allegations of material fact stated in the complaint, and the court construes them in the
16 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
17 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
18 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
19 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
20 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,
21 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
22 insufficient. *Id.*

23 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
24 that, because they are no more than mere conclusions, are not entitled to the assumption
25 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can
26 provide the framework of a complaint, they must be supported with factual allegations.”
27 *Id.* “When there are well-pleaded factual allegations, a court should assume their veracity
28 and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

1 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-
2 specific task that requires the reviewing court to draw on its judicial experience and
3 common sense.” *Id.*

4 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
5 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
6 includes claims based on legal conclusions that are untenable (e.g., claims against
7 defendants who are immune from suit or claims of infringement of a legal interest which
8 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
9 fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
10 *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

11 **II. SCREENING OF COMPLAINT**

12 In the complaint, Plaintiff sues multiple defendants for events that allegedly
13 occurred on May 19, 2019 while he was incarcerated at High Desert State Prison. (ECF
14 No. 1-1 at 1). Plaintiff sues M. Hubbard-Pickett, Lt. Octiverous, Brian Williams, Ennis,
15 and Barrett. (*Id.* at 1-3). Plaintiff brings three claims and seeks declaratory relief,
16 compensatory damages, and exemplary damages. (*Id.* at 5, 11). The Court addresses
17 each count in turn.

18 **A. Count I**

19 Count I alleges the following: On May 29, 2019, Lieutenant Octiverous came
20 through Unit 12-C with a Green Horn Officer in Training as Plaintiff and another inmate,
21 Zachary, sat at a table. (*Id.*) Octiverous leaned into Zachary’s ear and said to him loud
22 enough for all to hear, “If you get the chance, beat the fuck out of this guy” and then began
23 belittling him and calling him a troublemaker. (*Id.*) Zachary has “signed an affidavit.” (*Id.*)
24 Plaintiff alleges that Hubbard-Pickett repeatedly rejected Plaintiff’s grievances but also
25 says that the informal and first level grievances were partially granted. (*Id.*) Hubbard-
26 Pickett rejected the second level grievance on the grounds that the remedy had changed
27 from one level to another but it had not changed. (*Id.*) Plaintiff believes that correctional
28 officers have been targeting Plaintiff ever since he filed a lawsuit against correctional

1 officers in 2014. (*Id.*) Plaintiff concludes that Octiverous's conduct shows bias by a prison
2 official in their "higher levels of power," thus "proving an ongoing campaign of harassment,
3 bias, and retaliation." (*Id.*) Plaintiff concludes that this alleged conduct constitutes
4 intentional infliction of emotional distress and is cruel and unusual punishment in violation
5 of the Eighth Amendment. (*Id.*)

6 **1. Intentional Infliction of Emotional Distress**

7 Plaintiff's claims for intentional infliction of emotional distress are state tort claims,
8 not federal claims. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a
9 right secured by the Constitution or laws of the United States was violated. *West v. Atkins*,
10 487 U.S. 42, 48 (1988). Section 1983 does not provide a cause of action for violations of
11 state law. See *Galen v. County of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007).

12 Furthermore, Plaintiff may not bring his state tort claims in this Court. NRS 41.0337
13 provides that no Nevada state tort action may be brought against a person who is named
14 as a defendant solely because of an act or omission relating to the public duties or
15 employment of an officer or employee of the state or political subdivision unless the state
16 or appropriate political subdivision is "named a party defendant under NRS 41.031."
17 Thus, the State of Nevada is an indispensable party in such a tort claim. *Cf. Craig v.*
18 *Donnelly*, 439 P.3d 413, 415 (Nev. App. 2019) (holding that court was required under
19 NRS 41.031 and NRS 41.0337 to dismiss state tort claims because plaintiff had not
20 included the State of Nevada as a defendant); see also *Nunnelley v. Douglas Cty.*, 622
21 F. Supp. 124, 126 (D. Nev. 1985) (indicating that, under NRS 41.031, county that
22 employed alleged tortfeasor was indispensable party). However, the State of Nevada
23 has not waived its Eleventh Amendment sovereign immunity and therefore may not be
24 sued in federal court for a state law tort claim. See *O'Connor v. State of Nev.*, 686 F.2d
25 749, 750 (9th Cir. 1982) (recognizing that, under the Eleventh Amendment, a state or its
26 agencies cannot be sued in federal court without the state's consent and Nevada explicitly
27 has refused to waive its Eleventh Amendment immunity). So, any tort claims Plaintiff
28 seeks to bring based on the facts alleged in the complaint must be brought in state court,

1 not federal court. See *Hirst v. Gertzen*, 676 F.2d 1252, 1263–65 (9th Cir. 1982) (holding
2 that, where Montana state law deemed governmental entity to be an indispensable party
3 in any negligence action brought against its employee, the federal court had no
4 supplemental jurisdiction over the state law claim if it had no jurisdiction over the
5 indispensable party).

6 The Court therefore dismisses without prejudice and without leave to amend the
7 claims for intentional infliction of emotional distress. Plaintiff may not pursue these claims
8 in this action.

9 **2. Eighth Amendment Claims**

10 Verbal harassment or abuse is insufficient to state a constitutional deprivation
11 under 42 U.S.C. § 1983. *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987).
12 Thus, a mere naked threat is not sufficient to violate the Eighth Amendment; see also
13 *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir.1996) (stating that “verbal harassment
14 generally does not violate the Eighth Amendment”), amended on other grounds by 135
15 F.3d 1318 (9th Cir.1998); *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir.1987) (a
16 “mere naked threat” from prison guards does not violate the Eighth Amendment). Thus,
17 to the extent Plaintiff is alleging that Octiverous verbally harassed him, he fails to state a
18 colorable claim.

19 Although it is not clear, Dryden may be attempting to state an Eighth Amendment
20 claim for deliberate indifference to Plaintiff’s safety. Under the Eighth Amendment, prison
21 officials have a duty to protect prisoners from violence at the hands of other prisoners.
22 *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). To establish such a violation, the prisoner
23 must establish that a prison was deliberately indifferent to an excessive risk to the
24 inmate’s safety. *Id.* at 834. Thus, a plaintiff must not only establish an excessive risk to
25 his safety; he must also demonstrate that the prison official was deliberately indifferent to
26 that excessive risk by showing that “the official [knew] of and disregard[ed] an excessive
27 risk to inmate . . . safety; the official must both be aware of facts from which the inference
28 could be drawn that a substantial risk of serious harm exists, and [the official] must also

1 draw the inference.” *Id.* at 836-36. In addition, plaintiffs alleging deliberate indifference
2 must also demonstrate that the defendant’s actions were both an actual and proximate
3 cause of their injuries. *Lemire v. California Dep’t of Corr. & Rehab.*, 726 F.3d 1062, 1074
4 (9th Cir. 2013).

5 Here, it is not clear whether Plaintiff is even attempting to show that there ever was
6 an excessive risk to his safety. Plaintiff appears to be suggesting that Zachary is a friend
7 or is supportive of him and even has provided Plaintiff with an affidavit. Plaintiff has not
8 alleged facts that would be sufficient to show that there actually was an excessive risk
9 that Zachary would follow Octiverous’s suggestion to beat Plaintiff. Plaintiff also does not
10 allege facts that would show that Zachary did beat him. The Court therefore dismisses
11 this claim without prejudice and with leave to amend. If Plaintiff chooses to amend this
12 claim, he may not merely allege verbal harassment. Rather, he must allege true facts
13 sufficient to show that there was an excessive risk that he actually would be beaten and
14 that the defendant was deliberately indifferent to this risk. He also should allege facts
15 sufficient to show what injuries, if any, the defendant caused Plaintiff.

16 **3. Retaliation**

17 To state a viable First Amendment retaliation claim in the prison context, a plaintiff
18 must allege facts sufficient to show: “(1) a state actor took some adverse action against
19 an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)
20 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not
21 reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559,
22 567-68 (9th Cir. 2004). Total chilling is not required; it is enough if an official’s acts would
23 chill or silence a person of ordinary firmness from future First Amendment activities. *Id.*
24 at 568-69.

25 Thus, to state a retaliation claim, the plaintiff must allege facts sufficient to show
26 that the particular defendant engaged in adverse conduct. *Id.* at 567. Furthermore, the
27 plaintiff must allege facts sufficient to show that the particular defendant was aware of the
28 protected conduct and that the protected conduct provided that particular defendant with

1 a retaliatory motive; mere speculation is insufficient. *Pratt v. Rowland*, 65 F.3d 802, 808–
2 09 (9th Cir. 1995). Timing may sometimes provide some circumstantial evidence of
3 retaliatory intent when adverse conduct takes place shortly after the plaintiff engages in
4 protected conduct. See *Bruce v Ylst*, 351 F.3d 1283, 1288-89 (9th Cir. 2000) (suspect
5 timing of adverse conduct soon after protected conduct, combined with statements by
6 defendants and evidence of pretext created triable issue of fact concerning retaliatory
7 motive). However, there must be something more than such timing to show retaliatory
8 intent; retaliation is not established simply by showing adverse activity after the
9 occurrence of protected speech, but rather a plaintiff must show a connection between
10 the two events. *Husky v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000); *Pratt*, 65
11 F.3d at 808 (“suspect timing” of inmate’s transfer to different prison, without more,
12 insufficient to support inference that the transfer was done in retaliation for inmate’s
13 exercise of First Amendment rights); *Phillippi v. Patterson*, 599 F. App’x 288, 289 (9th
14 Cir. 2015); *Rupe v. Beard*, No. CV-08-2454-EFS PC, 2013 WL 6859278, at *7 (E.D. Cal.
15 Dec. 24, 2013). Moreover, the plaintiff bears the burden of pleading the absence of
16 legitimate correctional goals for the conduct of which he complains. *Pratt*, 65 F.3d at 806.
17 In addition, retaliation claims brought by prisoners must be evaluated in light of concerns
18 over “excessive judicial involvement in day-to-day prison management, which ‘often
19 squander[s] judicial resources with little offsetting benefit to anyone.’” *Pratt*, 65 F.3d at
20 807 (quoting *Sandin v. Conner*, 515 U.S. 472, 482 (1995)).

21 In addition, a defendant is liable under 42 U.S.C. § 1983 “only upon a showing of
22 personal participation by the defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
23 1989); *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (holding that “[b]ecause vicarious
24 liability is inapplicable to Bivens and § 1983 suits, a plaintiff must plead that each
25 Government-official defendant, through the official’s own individual actions, has violated
26 the Constitution”). Thus, a person does not become liable for retaliation merely because
27 he or she is employed with, supervised by, or a supervisor of someone who engages in
28 retaliation. Furthermore, a defendant’s mere knowledge of someone else’s retaliation is

1 insufficient to hold that defendant liable for retaliation. *Cf. Iqbal*, 556 U.S. at 677; *see also*
2 *Heilman v. Wasko*, No. 2:12-CV-1966 GGH P, 2012 WL 4468417, at *2 (E.D. Cal. Sept.
3 25, 2012). Rather, for each defendant, a plaintiff must allege facts sufficient to show that
4 the particular defendant took a particular adverse retaliatory course of conduct because
5 of particular protected conduct. Speculative, collective, conclusory, and vague allegations
6 are not sufficient.

7 The Court finds that Plaintiff fails to state a colorable retaliation claim. Plaintiff
8 alleges that he filed a lawsuit a number of years ago. He does not alleged facts sufficient
9 to show that Defendant Octiverous engaged in adverse and chilling conduct *because* of
10 that lawsuit. The Court therefore dismisses the retaliation claim without prejudice and with
11 leave to amend. If Plaintiff chooses to amend this claim, conclusory allegations will not
12 be sufficient. Furthermore, he must do more than allege that he engaged in protected
13 conduct in 2014 and that he subsequently suffered adverse conduct by the defendant.
14 Plaintiff must allege true facts sufficient to show that the defendant engaged in retaliatory
15 and chilling adverse action because of the protected conduct.

16 **B. Count II**

17 Count II alleges the following: When Defendant Octiverous said “If you get the
18 chance, beat the fuck out of this guy,” it was a violation of an administrative code and
19 officers are to be disciplined when this code of conduct is violated. (ECF No. 1-1 at 6).
20 Hubbard-Pickett has swept these issues under the rug to protect Octiverous when she
21 “failed” and “rejected” Plaintiff’s grievance five times after Plaintiff “made it clear what was
22 going on.” (*Id.*) She found minor issues and made up false ones to “reject Plaintiff’s
23 issues in an ongoing problem that has created an issue of retaliation. (*Id.*) Plaintiff
24 concludes that this alleged conduct constitutes “negligent training, supervising, recruiting
25 policies” and that it constitutes cruel and unusual punishment in violation of the Eighth
26 Amendment. (*Id.*)

27 **1. Negligent Training, Supervising, and Recruiting**

28 Negligence is not a violation of the Eighth Amendment. *Farmer v. Brennan*, 511

1 U.S. 825, 835-36 (1994). Rather, negligence is a state tort. As discussed above, Plaintiff
2 may not pursue state tort claims against the Defendants in this action. See Section II.A.1
3 *supra*. The Court therefore dismisses without prejudice and without leave to amend the
4 claims for negligent training, supervising, and recruiting.

5 **2. Eighth Amendment Claims**

6 For a discussion of applicable Eighth Amendment law, see Section II.A.2 *supra*.

7 A defendant is liable under 42 U.S.C. § 1983 “only upon a showing of personal
8 participation by the defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).
9 “Because vicarious liability is inapplicable to Bivens and § 1983 suits, a plaintiff must
10 plead that each Government-official defendant, through the official’s own individual
11 actions, has violated the Constitution.” *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).
12 Therefore, a Plaintiff must allege facts sufficient to show that each particular defendant
13 was deliberately indifferent and caused the harm; a defendant does not become liable for
14 an Eighth Amendment violation merely because a co-worker or subordinate was
15 deliberately indifferent. *Starr v. Baca*, 652 F.3d 1202, 1206-07 (9th Cir. 2011). Merely
16 failing to train or supervise subordinates is insufficient to establish that supervisors acted
17 unconstitutionally. *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir.
18 2010).

19 The Court finds that Plaintiff fails to state a colorable Eighth Amendment claim. To
20 the extent Plaintiff is attempting to state a claim against Hubbard-Pickett merely because
21 she rejected his grievances, he fails to state a colorable claim and cannot do so.

22 Furthermore, informing Hubbard-Pickett of a constitutional violation after someone
23 else committed a violation is not sufficient to show that Hubbard-Pickett herself was
24 deliberately different and caused injuries to Plaintiff. The Court therefore dismisses the
25 Eighth Amendment claim against Hubbard-Pickett without prejudice and with leave to
26 amend. If Plaintiff chooses to amend this claim, Plaintiff must allege true facts sufficient
27 to show that there actually was an excessive risk to Plaintiff’s safety, that the particular
28 defendant believed that an actual excessive risk to Plaintiff existed and responded

1 unreasonably to that risk, thus causing Plaintiff's specified injuries. The mere denial of a
2 grievance claiming that an officer violated a prison regulation will not be sufficient to state
3 a claim. Alleging that a subordinate committed a constitutional violation also will not be
4 sufficient. In addition, conclusory allegations or allegations of negligence will not be
5 sufficient.

6 **3. Retaliation**

7 For a discussion of the relevant retaliation law, see Section II.A.3 *supra*.

8 The Court finds that Plaintiff fails to state a colorable retaliation claim. Plaintiff
9 alleges that he filed a lawsuit a number of years ago. He does not alleged facts sufficient
10 to show that Defendant Hubbard-Pickett engaged in adverse and chilling conduct
11 *because* of that lawsuit. The Court therefore dismisses the retaliation claim without
12 prejudice and with leave to amend. If Plaintiff chooses to amend this claim, conclusory
13 allegations will not be sufficient. Furthermore, he must do more than allege that he
14 engaged in protected conduct in 2014 and that he subsequently suffered adverse conduct
15 by the defendant. He also must do more than allege that someone else engaged in
16 retaliation. Plaintiff must allege true facts sufficient to show that the particular defendant
17 engaged in retaliatory and chilling adverse action because of the protected conduct.

18 **C. Count III**

19 Count III alleges the following: Due to filing a "lawsuit/grievance on cos" in January
20 2014, Plaintiff has "suffered severely by the hands of prison officials sworn to protect him."
21 (ECF No. 1-1 at 7). "They" placed Plaintiff in General Population as a protective custody
22 level inmate without signing a waiver of liability and then "launched a campaign of
23 harassment and retaliation" where Plaintiff was labeled a "rat-snitch" by correctional
24 officer Kenneth Osborn¹ on January 8, 2014.² (*Id.*) Plaintiff repeatedly has been attacked

25
26 ¹ Osborn is not a defendant in this action and the Court is aware that Plaintiff
27 already has brought an Eighth Amendment claim against Osborn based on these
28 allegations. A duplicative claim could not be brought in this action and, in fact, would be
deemed malicious. Therefore, the Court does not construe the complaint as alleging an
Eighth Amendment claim against Osborn.

² To the extent Plaintiff is alleging that the Osborn called him a snitch because of

1 by inmates, "marked for death," thrown in the hole, and has been charged with assaults,
2 refusing housing, threats, and disruption of operations. (*Id.*) Every time Plaintiff has
3 "sought help," he has been "refused and thrown back into the cell with combative cellies"
4 only to have to defend himself or refused housing and go to the hole. (*Id.*) Ninety percent
5 of the time, the aggressors are rewarded with no charges and left in the cell while Plaintiff
6 is taken to the hole. (*Id.*) Aggressors are given jobs and level one status for attacking
7 Plaintiff. (*Id.*)

8 Plaintiff now is being punished with hole time in Administrative Segregation due to
9 high yard points, yet those who attacked Plaintiff are not. (*Id.*) Plaintiff has filed "countless
10 grievances." (*Id.* at 8). He also "has documented all these events in countless verbal
11 exchanges" to Psych doctors, Case Workers (Ennis, Barrett), Warden Brian Williams,
12 Associate Warden M. Hubbard-Pickett, Nash, and Lt. Octiverous. (*Id.* at 8). Plaintiff is
13 considered a rat wherever he goes, even in protective segregation, and he is safer where
14 he is in administrative segregation. (*Id.*) However, he is locked down 24/7 with no tier,
15 which is "a blatant violation" of Plaintiff's Eighth Amendment rights. (*Id.*) Plaintiff asserts
16 that "these issues" are "torture tactics" to "break" Plaintiff for filing a lawsuit against
17 correctional officers in this prison where he is held and "retaliated against." (*Id.*)

18 Plaintiff concludes that this alleged conduct was a "retaliation/campaign of
19 harassment" and a violation of the Eighth Amendment. (*Id.* at 7).

20 **1. Eighth Amendment**

21 For a discussion of relevant Eighth Amendment law, see Section II.A.2 and II.B.2
22 *supra*.

23 The Court finds that Plaintiff fails to state a colorable Eighth Amendment claim.
24 Plaintiff's allegations are largely conclusory, vague, and collective, and some of the
25 allegations are duplicative of Claims I and II. As discussed above, to state a colorable §
26 1983 claim, a plaintiff must allege *facts* sufficient to show that a *particular* defendant

27 _____
28 the lawsuit he filed, the Court will not accept that allegation as true because that lawsuit
was filed because Osborn allegedly called Plaintiff a snitch. See 2:16-cv-01227-JAD-EJY,
ECF No. 1-2.

1 violated his constitutional rights. Here, Plaintiff merely has listed a number of vague
2 incidents or conditions without alleging facts that would be sufficient to show that any
3 particular defendant was deliberately indifferent to a particular unsafe condition, causing
4 him harm. The Court therefore dismisses any Eighth Amendment claims without
5 prejudice and with leave to amend.

6 If Plaintiff chooses to amend any Eighth Amendment claims in Count III, he may
7 not repeat any Eighth Amendment claims brought in Count I or Count II or pursued in
8 another case. Furthermore, for each allegedly unconstitutional condition, he must allege
9 facts sufficient to show that the condition was sufficiently severe to constitute an
10 excessive risk to Plaintiff's health or safety. In addition, for each such incident and
11 condition, he must allege facts sufficient to show that each particular defendant knew of
12 that particular condition, believed that there was an excessive risk to Plaintiff's health or
13 safety, and nevertheless unreasonably refused to address that risk, causing Plaintiff
14 specified injuries. Plaintiff is advised that merely alleging that a Defendant has placed him
15 in administrative segregation or disciplinary segregation will not be sufficient to allege a
16 serious risk to his health or safety. Conclusory and collective allegations also will not be
17 sufficient. Allegations constituting negligence also will not be sufficient.

18 **2. Retaliation**

19 For a discussion of the relevant law regarding retaliation see Section II.A.3 *supra*.

20 The Court finds that Plaintiff fails to state a colorable retaliation claim. Plaintiff's
21 retaliation claims are merely conclusory. Although Plaintiff apparently believes that a
22 litany of bad experiences he has had since 2014 all constitute retaliation, that is not
23 sufficient to state a retaliation claim. The Court dismisses the retaliation claims without
24 prejudice and with leave to amend. However, if Plaintiff chooses to amend this claim,
25 conclusory allegations will not be sufficient. Moreover, for each retaliation claim, he must
26 do far more than make conclusory allegations of retaliation or allege that he engaged in
27 protected conduct in 2014 and that he subsequently suffered adverse conduct. For *each*
28 Defendant, Plaintiff must allege true *facts* sufficient to show that the *particular* defendant

1 engaged in retaliatory and chilling adverse action *because* of the protected conduct rather
2 than to advance a legitimate correctional goal.

3 **D. Leave to Amend**

4 Plaintiff is granted leave to file an amended complaint to cure the deficiencies of
5 the Eighth Amendment and retaliation claims, as outlined above. However, the Court
6 notes that it may very well be that Plaintiff has improperly joined some of the claims in
7 this action. Because it is not always clear from the Complaint who Plaintiff is attempting
8 to sue and on what factual basis, the Court cannot rule at this time on whether the joinder
9 of all the claims is proper. To be clear, the fact that the Court is giving Plaintiff leave to
10 amend some claims does not mean that all such claims necessarily are properly joined
11 in this action. If Plaintiff improperly joins claims in one action, the Court later may sua
12 sponte dismiss improperly joined claims and Defendants later may move to dismiss
13 claims that Plaintiff has improperly joined, and it is possible that Plaintiff may not then be
14 able to pursue those claims in another action.

15 Under Rule 20(a)(2), permissive joinder of multiple defendants in a single lawsuit
16 is allowed only if: (1) a right to relief is asserted against each defendant that relates to or
17 arises out of the same transaction or occurrence or series of transactions or occurrences;
18 and (2) any question of law or fact common to all defendants arises in the action.
19 Unrelated claims involving different defendants belong in different suits. See *George v.*
20 *Smith*, 507 F.3d 605, 607 (7th Cir.2007). Claims may not be joined merely because they
21 occurred in the same prison, the violators had the same supervisor, or the claims are
22 based on the same type of constitutional violation, such as retaliation or deliberate
23 indifference to health and safety. Plaintiff may not evade these requirements merely by
24 alleging that he told the same person about them or by baselessly adding a defendant to
25 claims or making conclusory allegations that there is a campaign of harassment and
26 retaliation. Plaintiff also may not evade these requirements by including multiple causes
27 of action in a part of the complaint form reserved for one claim.

28 Plaintiff may not amend the complaint to add unrelated claims against other

1 defendants. Furthermore, an amended complaint does not include new claims based on
2 events that have taken place since the original complaint was filed. Any such claims must
3 be brought in another action or actions.

4 If Plaintiff chooses to file an amended complaint, he is advised that an amended
5 complaint supersedes (replaces) the original complaint and, thus, the amended complaint
6 must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896
7 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the
8 original complaint is irrelevant; an amended pleading supersedes the original”); *but see*
9 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims
10 dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent
11 amended complaint to preserve them for appeal).

12 Plaintiff should file the amended complaint on this Court’s approved prisoner civil
13 rights form, and it must be entitled “First Amended Complaint.” For *each* cause of action
14 and *each* Defendant, he must allege *facts* sufficient to show that the *particular* Defendant
15 violated Plaintiff’s civil rights, providing a short and plain statement showing that he is
16 entitled to relief. Plaintiff may not include allegations in a claim if those allegations are
17 extraneous to the particular claim.

18 The Court notes that, if Plaintiff chooses to file an amended complaint curing the
19 deficiencies, as outlined in this order, Plaintiff must file the amended complaint within 30
20 days from the date of entry of this order. If Plaintiff does not timely file an amended
21 complaint curing the stated deficiencies, this action will be dismissed with prejudice.

22 **III. CONCLUSION**

23 For the foregoing reasons, it is ordered that a decision on Plaintiff’s application to
24 proceed *in forma pauperis* (ECF No. 1) is deferred.

25 It is further ordered that the Clerk of the Court will file the Complaint (ECF No. 1-
26 1) and will send Plaintiff a courtesy copy of the Complaint.

27 It is further ordered that all of the state tort claims, including the claims for
28 negligence and intentional infliction of emotional distress, are dismissed without prejudice

1 and without leave to amend. Plaintiff may not pursue these claims in this case.

2 It is further ordered that the portion of the Eighth Amendment claim in Count I
3 alleging mere verbal harassment is dismissed with prejudice, as amendment would be
4 futile.

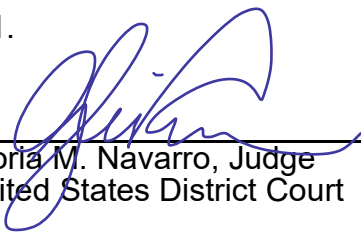
5 It is further ordered that the remainder of the case is dismissed without prejudice
6 and with leave to amend.

7 It is further ordered that, if Plaintiff chooses to file an amended complaint curing
8 the deficiencies of the complaint, as outlined in this order, Plaintiff shall file the amended
9 complaint within 30 days from the date of entry of this order.

10 It is further ordered that the Clerk of the Court shall send to Plaintiff the approved
11 form for filing a § 1983 complaint and instructions for the same. If Plaintiff chooses to file
12 an amended complaint, he should use the approved form and he must write the words
13 “First Amended” above the words “Civil Rights Complaint” in the caption.

14 It is further ordered that, if Plaintiff fails to file a timely amended complaint curing
15 the deficiencies of the complaint, this action shall be dismissed.

16
17 DATED THIS 18 day of May 2021.

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20 _____
21 Gloria M. Navarro, Judge
22 United States District Court
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